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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
) MD Docket No. 98-36
Assessment and Collection of)
Regulatory Fees for Fiscal Year)
1997)

COMMENTS OF SBC COMMUNICATIONS INC.

In response to the Commission's Notice of Proposed Rulemaking ("NPRM")¹ regarding regulatory fees for Fiscal Year ("FY") 1998, SBC Communications Inc. ("SBC") respectfully submits these Comments on its behalf and on behalf of all its subsidiaries, including Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell.

I. The transition to cost-based fees continues to have an unfair and disproportionate impact on certain regulated entities.

SBC opposes the Commission's method of phasing in cost-based regulatory fees.

According to the Commission, its method is supposed to move the regulatory fees applicable to regulated entities closer to the cost of regulating each class of entities. Instead, by virtue of the 25%-revenue ceiling, the gap between costs and fees is widening for some classes of regulatees, such as interstate telephone service providers. Therefore, SBC urges the Commission to reconsider the method of phasing-in cost-based regulatory fees in order to avoid an unfair and disproportionate burden on interstate telephone service providers.

¹ FCC 98-40 adopted March 13, 1998 and released March 25, 1998.

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In the NPRM, the Commission proposes to use the same general methodology used in developing the 1997 Fiscal Year fees. In the 1997 Regulatory Fees' NPRM,² the Commission proposed for the first time to adopt fees based on the cost of regulating the various services.³ Using a 25%-revenue ceiling,⁴ the Commission proposed to phase in the increased cost-based fees in a manner that supposedly avoided a dramatic increase in the fees applicable to any service.⁵

This method of limiting the increase, however, causes certain classes of regulatees to bear an unfair and disproportionate share of the burden. For example, in the case of interstate telephone service providers — IXCs, LECs, CAPs, *etc.* — the Commission used the factor of 0.00116 for Fiscal Year (FY) 1997. This factor was 18.4% higher than the factor of 0.00098 adopted for FY 1996 and, when compared to FY 1996, resulted in a \$1,100,000 or 30% increase in SBC's regulatory fees for FY 1997 and a \$856,000 or 23% increase for FY 1998.

The increases in SBC's regulatory fees in each of these two years are dramatic. Under the Commission's phase-in method, some of those that have overpaid the most continue to bear a greatly disproportionate share of the costs.

While the Commission estimated that, absent any fee changes in 1997, it would collect \$58.5 million from interstate telephone service providers, it also estimated that the actual regulatory cost attributable to interstate telephone service providers was only \$55 million.⁶ An

² CC 97-49, 1997 NPRM, Adopted February 14, 1997 and released March 5, 1997.

³ 1997 NPRM, ¶ 7.

⁴ 1997 NPRM, ¶ 18.

⁵ 1997 NPRM, ¶¶ 7, 10.

⁶ 1997 NPRM, Attachments C & D.

entirely cost-based calculation would yield a regulatory fee factor of only .0009167. Had the proposed regulatory fees been entirely cost-based, SBC's 1997 regulatory fee factor would have been lower than the 1996 factor of .00098. In that case, SBC's total 1997 regulatory fees would have increased by only \$92,000 or 2.5%, instead of \$1,110,371 or 30%. For 1998, the gap between regulatory fees and costs for interstate telephone service providers widened as the regulatory fees are estimated to be \$81 million whereas the regulatory costs are estimated at \$57 million.⁷

SBC recommends either that the Commission abandon the phase-in approach or that it adopt changes to its method of phasing in cost-based fees that would avoid placing an unfair burden on certain classes of regulatees.

Another approach would be the imposition of uniform increases in the fees of all regulatees. The uniform-increase method would have been more equitable than the method chosen by the Commission. When the cost of regulating the class is substantially less than the fees the Commission would have collected absent any increase at all in 1997, there is no reason that the transition to a cost-based system should penalize that class of regulatees by inordinately and abruptly increasing their fees. The Commission's method of phasing in cost-based regulatory fees is unfair and flawed. Interstate telephone service providers are subsidizing other regulatees, who are not being charged fees based on the costs of regulation attributable to them.

Moreover, in the process of phasing in *a cost-based system*, the fees should be moving closer to costs for all services. While the Commission claims that its proposed method will

⁷ NPRM, Attachments C & D.

result in fees “which more closely reflect [its] costs of regulating a service,”⁸ and that this proposed method will “reduce fees for services whose regulatory costs have declined...in order to begin eliminating the disparities...between a service’s costs and fees...,”⁹ in the case of interstate telephone service providers, the proposed method actually widens the gap significantly.

SBC recommends that the Commission re-examine its decision to use a revenue ceiling to phase in cost-based regulatory fees. Should the Commission determine that continuing a gradual transition to cost-based fees is unavoidable, however, the Commission should outline the remaining steps in this transitional plan. At a minimum, the Commission should consider increasing the revenue ceiling above 25%, especially for those regulatees whose fees are substantially below the costs attributable to them.

II. The calculation of fees discriminates against LECs relative to IXC and resellers and other non-facilities-based carriers.

Another flaw in the funding mechanism exists in the guidelines for calculating fees for interstate telephone service providers. With one significant exception, these fees are based upon the providers' proportionate share of gross interstate revenues.¹⁰ Yet, interexchange carriers (“IXCs”) and resellers and other non-facilities-based carriers are allowed to deduct all payments made to underlying common carriers for telecommunications services and facilities.¹¹ Unlike IXCs and other non-facilities-based carriers, LECs are not allowed to deduct any of the costs of

⁸ 1997 NPRM, ¶ 7.

⁹ 1997 NPRM, ¶ 10.

¹⁰ 1997 NPRM, Attachment H, ¶ 31 (citing Telecommunications Relay Services, 8 FCC Rcd 5300 (1993) (“TRS Third Report & Order”)).

¹¹ TRS Third Report & Order, ¶ 16; 47 C.F.R. §64.604(c)(4)(iii)(A).

their underlying telecommunications services and facilities. As compared to IXC's and other non-facilities-based carriers, this practice disproportionately increases the fees for LEC's.

This exception is intended to “avoid imposing any double payment burden on resellers.”¹² Without this exception, however, any double payment burden would not be imposed solely on resellers. If all providers used gross interstate revenues, IXC's would also pay fees based on those same access charges, but only to the extent reflected in the IXC's' retail rates. Any double payment burden would be borne by all providers paying access charges, including LEC's and IXC's. As it stands, this exception is unfair to LEC's.¹³

Instead of using gross revenues, SBC recommends that the recovery mechanism should be patterned after the Commission's methodology for Universal Service Fund contributions, making payments based on retail revenues. While enhancing the consistency of regulatory fee recovery and Universal Service Fund recovery, basing fees on retail revenues would be the most competitively neutral solution. In the alternative, SBC proposes a compromise solution that avoids the double recovery problem without unduly burdening LEC's. The Commission should allow all parties — LEC's, IXC's, and resellers and other non-facilities-based carriers — to deduct a pro rata share of the total access charges. This recommendation would mean that all access

¹² Id., ¶ 9 (emphasis added).

¹³ The method proposed in the 1997 NPRM is inconsistent with the approach adopted in the Telecommunications Relay Services decision cited in the NPRM's discussion of interstate telephone service providers' fees. Telecommunications Relay Services (“TRS”), 8 FCC Rcd 5300 ¶16 (1993), cited in 1997 NPRM, Attachment H, ¶31. In the TRS decision, the Commission required all providers to use gross interstate revenues without any deductions for the costs of underlying facilities. While the TRS method is not ideal, at least it does not discriminate against one type of interstate telephone service provider.

charges are accounted for and that the burden is shared fairly by all carriers. SBC recommends that the Commission should allow LECs to deduct at least half of their total access charges.¹⁴

III. Rural Radio Service is incorrectly classified as Commercial Mobile Radio Service (CMRS).

The Commission notes that some CMRS fee payers have had difficulty distinguishing between CMRS Mobile Services fees and CMRS Messaging Service fees, and concludes that further clarification would be beneficial to licensees and other fee payers.

SBC supports the decision to provide needed clarification concerning these fees. We note that the Commission proposes to collect CMRS Mobile Services fees from licensees in the Rural Radio Service.¹⁵ Rural Radio Service should not be included in either of the CMRS categories; rather, the service should be covered by a fixed "small fee" on a per license basis to be paid at the time of license renewal for the full term of the license.

The Commission in establishing the CMRS classification specifically concluded: "we find that the Rural Radio Service, including BETRS, is a fixed service and is not affected by this proceeding."¹⁶ This conclusion has been made a part of the Commission's rules, which provide in pertinent part:

"The following are mobile services within the meaning of sections 3(n) and 332 of the Communications Act, 47 U.S.C. 153(n), 332:

¹⁴ In doing so, the Commission should recognize that the double payment burden is greater on LECs than on IXCs; retail rates are less likely to fully reflect the underlying facilities costs (i.e., the access charges paid to the LECs).

¹⁵ NPRM, ¶ 29.

¹⁶ Second Report and Order in GN Docket No. 93-252 (Implementation of Sections 3(n) and 332 of the Communications Act - Regulatory Treatment of Mobile Services). ("CMRS Regulatory Treatment Order").

"(a) Public mobile services ... excluding Rural Radio Service and Basic Exchange Telecommunications Radio Service (part 22, subpart H of this chapter);"¹⁷

Rural Radio Service (including Basic Exchange Telecommunications Radio Service) is not classified as CMRS for regulatory purposes and is not subject to the provisions of 47 C.F.R. Part 20 — Commercial Mobile Radio Services. Similarly, Rural Radio Service should not be classified as CMRS for regulatory fee purposes. Including non-CMRS services within the CMRS fee categories tends to undermine the prior decision of the Commission on the proper regulatory treatment for these services.

In support of the proposal to apply a "small fee" to Rural Radio Service, SBC recommends the imposition of an annual \$12 fee per license, which would slightly increase the revenues to be collected from Southwestern Bell Telephone Company for its fifteen Rural Radio Service licenses. SBC believes this increase in fees paid to the Commission would be more than offset by the cost reduction associated with the reduced regulatory burden to the licensee.

The Commission also proposes to distinguish between CMRS Mobile Services and CMRS Messaging Services based on the broadband or narrowband nature of the spectrum used to provide the service.¹⁸ SBC opposes determining the amount of regulatory fees paid by competitors based solely on the broadband or narrowband nature of the spectrum used. As recognized by this Commission in establishing the CMRS designation and implementing the Omnibus Reconciliation Act of 1993, the Congressional and Commission intent was to create regulatory symmetry among similar mobile services.¹⁹ Treating competing carriers differently

¹⁷ 47 C.F.R. § 20.7

¹⁸ NPRM, ¶ 29.

¹⁹ CMRS Regulatory Treatment Order, ¶ 2.

for the purpose of calculating the regulatory fees paid is directly contrary to such Congressional and Commission intent. Narrowband Personal Communications Services and Specialized Mobile Radio Services should not receive a competitive advantage by paying less in regulatory fees than the cellular and Broadband Personal Communications Services they are competing against.


IV. Conclusion.

Instead of continuing with the gradual transition to cost-based regulatory fees, the Commission should adopt fees that are entirely cost-based. Alternatively, should the Commission determine that a transition period remains unavoidable, the Commission should not continue to impose an unfair share of the burden of increased fees on those regulatees who have been paying a great deal more than the costs attributable to them. Also, clarification on the classification of Rural Radio Service is needed as present rules and decisions clearly exclude such services.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY" in MS Docket No. 98-36 has been filed this 22nd day of April, 1998 to the Parties of Record.

A handwritten signature in cursive script, reading "Katie M. Turner", written over a horizontal line.

Katie M. Turner

April 22, 1998

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